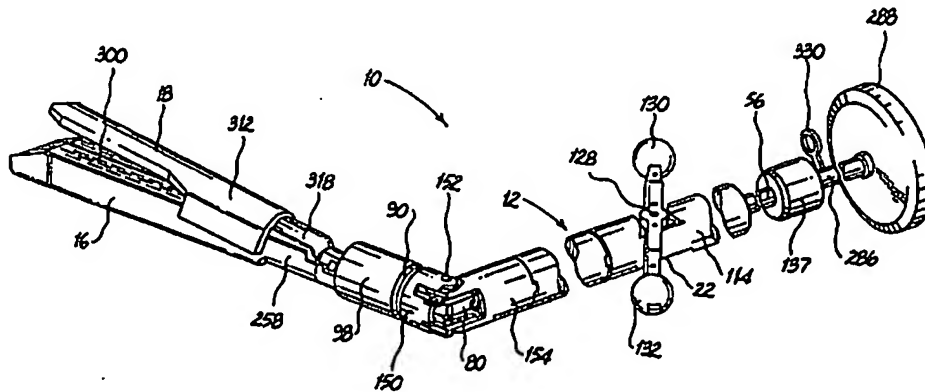


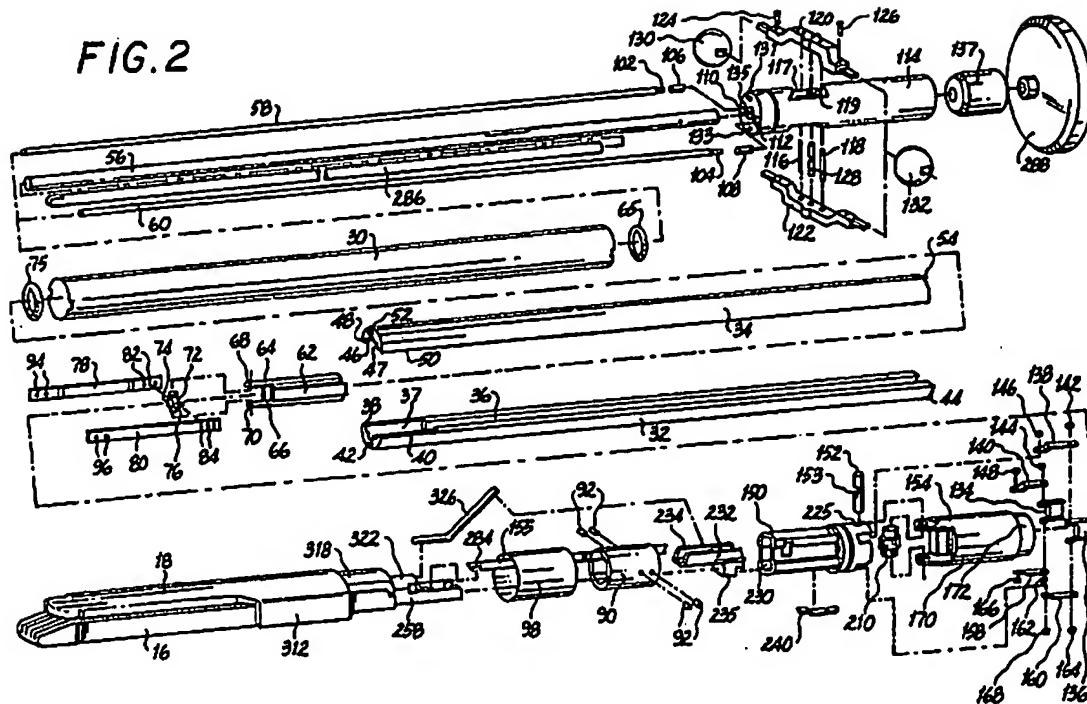
REMARKS

Claims 32-36 and 39-41 are currently pending in this application. By this amendment, Claim 32 has been amended. No new matter has been added to this application by this amendment. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

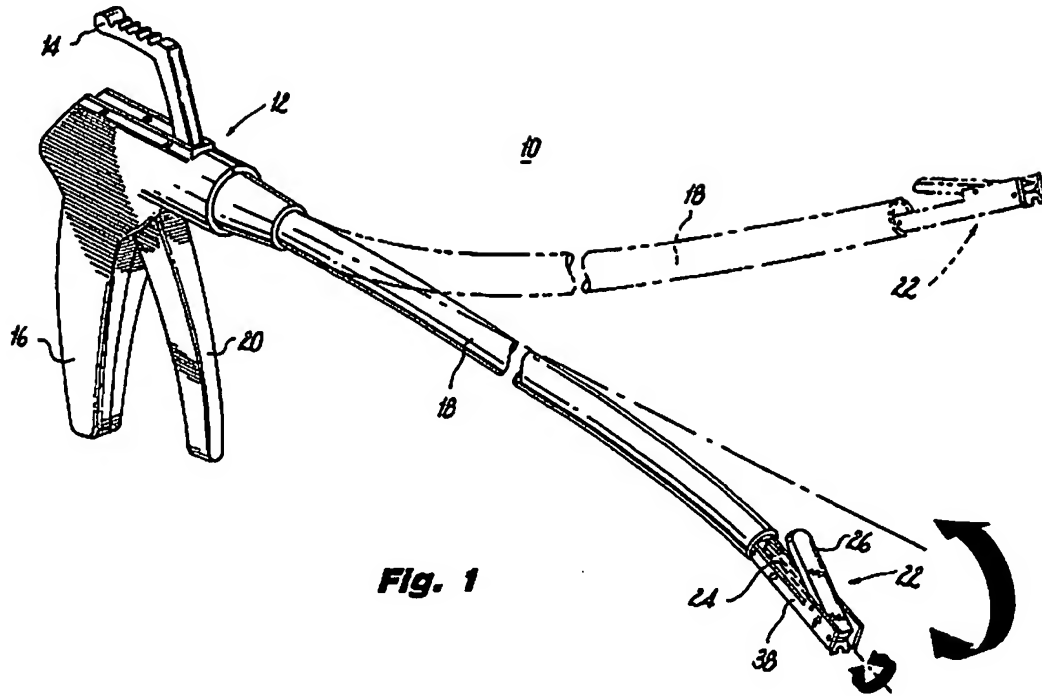
In the Office Action, Claims 32-34, 36 and 39-41 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. patent No. 5,485,952 ("Fontayne") in view of U.S. patent No. 5,897,562 ("Bolanos"). Fontayne discloses an apparatus 10 for applying surgical fasteners shown in FIG. 8 reproduced below which includes a cartridge housing 16, an anvil member 18 and a collar tube 90. Collar tube 90 is movable via a links 78 and 80 (FIG. 2) into a cam surface 318 formed on anvil member 18 to move the anvil member 18 into approximation with cartridge housing 16.

FIG. 8





Bolanos discloses a non-invasive apparatus shown in FIGS. 1 and 3 reproduced below which includes a staple cartridge 24 and an anvil 26. A roller assembly 34 includes a roller member 51. Roller assembly 34 is movable via a wire or rod 36 to pivot anvil 26 towards staple cartridge 24. See FIG. 6A reproduced below.



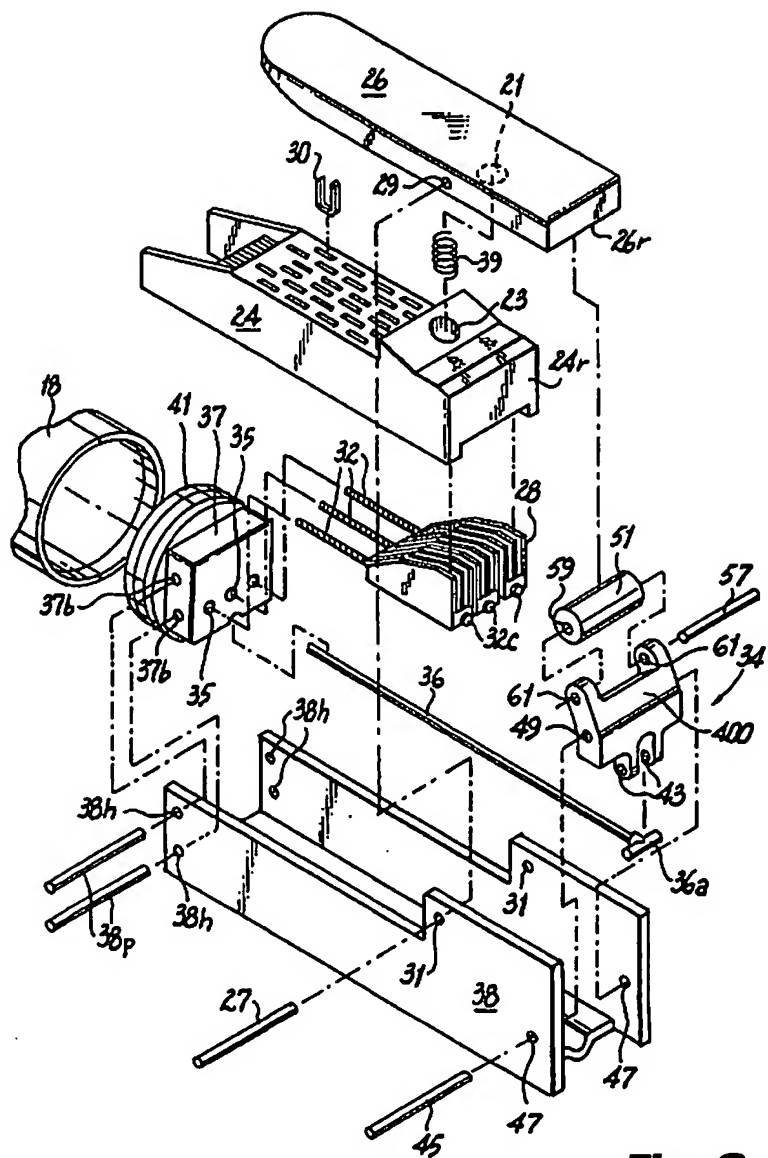
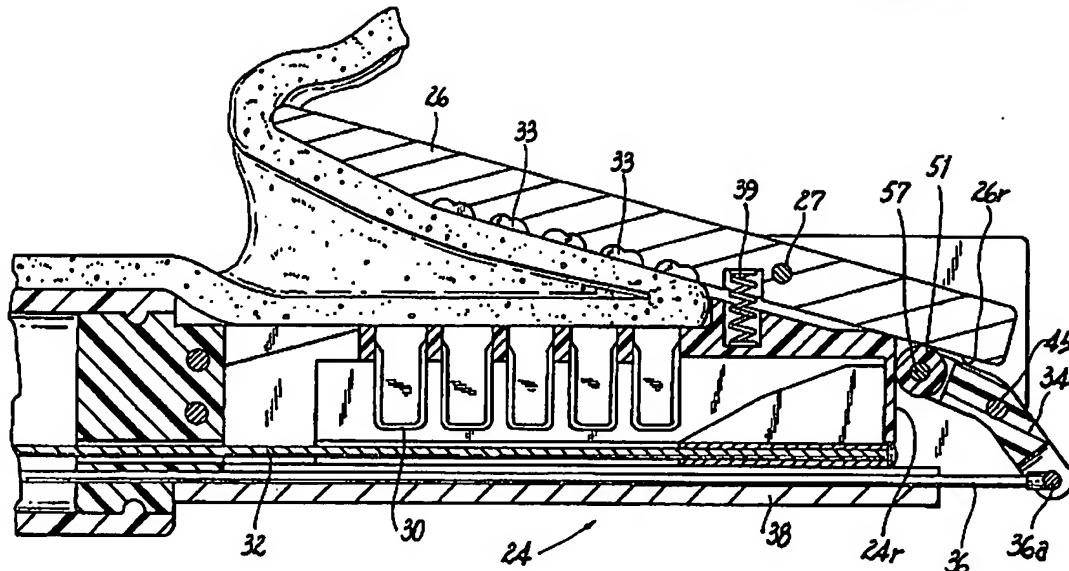


Fig. 3

Fig. 6A



Claim 32 recites a tool assembly including, inter alia, a dynamic clamping member movably positioned in relation to the anvil and the cartridge assembly, from a first position located at a proximal end of the tool assembly to a second position located at a distal end of the tool assembly, the dynamic clamping member being configured to slidably engage the anvil and the cartridge assembly to define a maximum tissue gap between the anvil and the cartridge assembly adjacent the dynamic clamping member during ejection of the plurality of staples from the cartridge assembly. Applicants respectfully submit that neither Fontayne nor Bolanos disclose an apparatus which includes such a dynamic clamping member. Also neither reference discloses at least one pulley which effects movement of a dynamic clamping member from a first proximal position to a second distal position. Even if the combination of Fontayne and Bolanos were made, it would not result in the claimed invention. For either or both of these reasons,

Appl. No. 10/529,799
Amdt. Dated July 7, 2008
Response to Office Action dated: March 7, 2008

Claim 32 patentably defines over Fontayne and Bolanos, taken alone or in combination, and is in condition for allowance.

In the Office Action, Claim 35 was rejected under 35 U.S.C. § 103(a) over Fontayne in view of Bolanos and further in view of U.S. patent No. 5,865,361 ("Milliman"). Milliman discloses a surgical stapling apparatus shown in FIGS. 1, 24 and 29 reproduced below which includes a tool assembly including an anvil assembly 20 and a cartridge assembly 18. A camming surface 209 is formed on a proximal end of anvil portion 204 of anvil assembly 20. The assembly includes a drive assembly 212 having a working head 268 which has a cam roller 286 (FIG. 29) which is movable axially to pivot anvil assembly 20 in relation to cartridge assembly 18 from an open position to a closed position. Working head 268 also includes a support member 287 which moves along cartridge assembly 18. Cam roller 286 and support member 287 engage anvil assembly 20 and cartridge assembly 18, respectively, to define the maximum tissue gap adjacent the location where stapling formation occurs. Thus, drive assembly 212 functions to both move the anvil assembly 20 to a closed position and to define a maximum tissue gap.

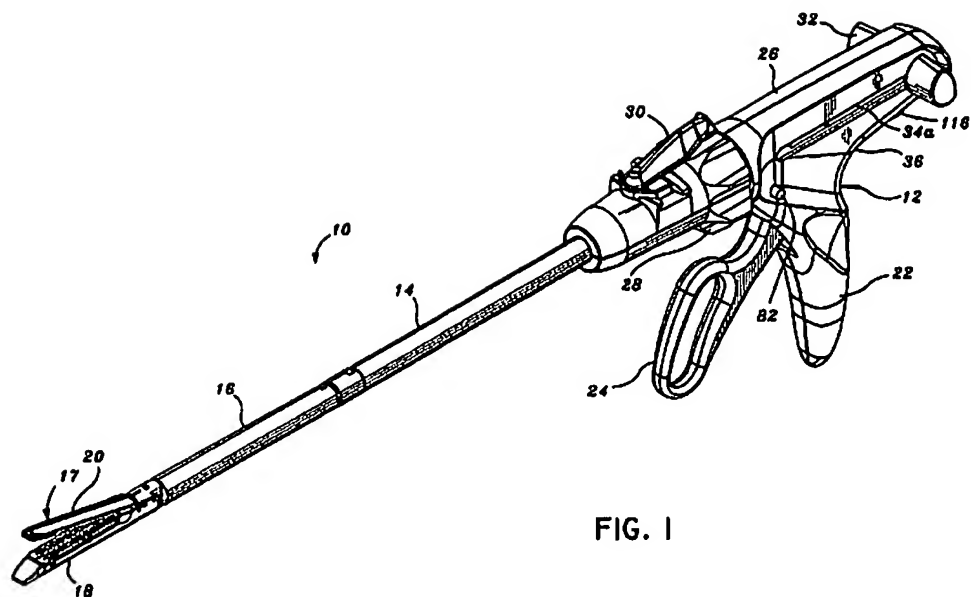


FIG. 1

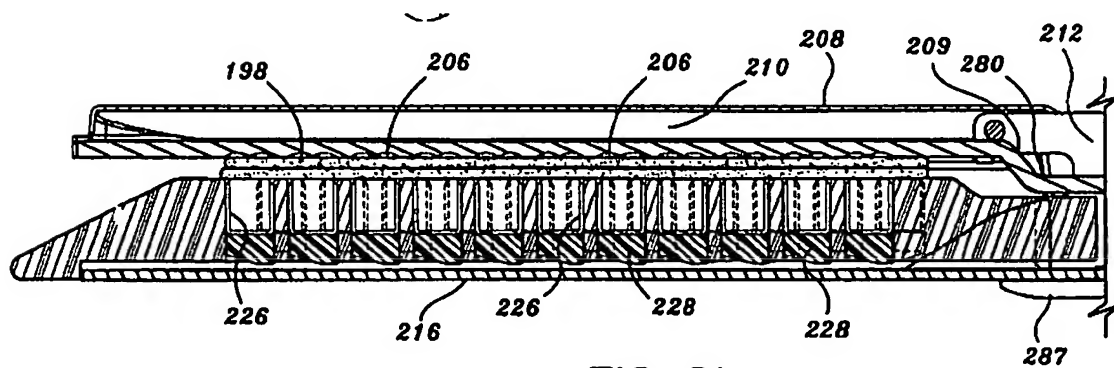


FIG. 24

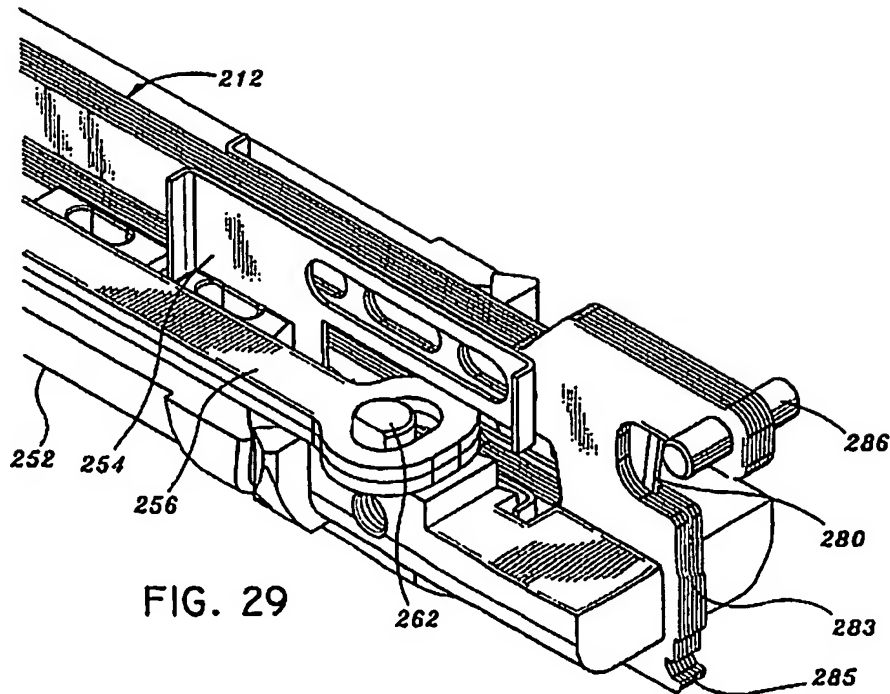


FIG. 29

In the Office Action, the Examiner stated the following:

“The modified invention of Fontayne discloses a dynamic clamping member with a mechanical interface 289 which slidably engages the cartridge assembly, but fails to disclose a mechanical interface which slidingly engages the anvil assembly. Milliman shows a tool assembly 17 including an anvil 20, a cartridge 18, and a dynamic clamping member with a first and a second mechanical interface as claimed (see Figs. 45, 49, 51-52) for the purpose of press together the anvil and cartridge assembly to uniformly maintain a gap between tissue contacting the anvil and the cartridge during stapling. It would have been obvious to one having ordinary skill in the art to have provided the modified invention of Fontayne with a dynamic clamping member having a first and second mechanical interfaces as taught by Milliman to maintain a uniform gap between tissue contacting the anvil and the cartridge during stapling.”

Claim 32 recites a tool assembly including, inter alia, "a clamp collar positioned adjacent the proximal end of the cartridge assembly and the anvil and being movable from a first position to a second position to effect movement of the anvil in relation to the cartridge assembly from the open position towards the approximated position, wherein in the second position, the clamp collar is positioned about the proximal ends of the cartridge assembly and anvil." Claim 32 also includes "a dynamic clamping member movably positioned in relation to the anvil and the cartridge assembly, from a first position at a proximal end of the tool assembly to a second position at a distal end of the tool assembly, the dynamic clamping member being configured to slidably engage the anvil and the cartridge assembly to define a maximum tissue gap between the anvil and the cartridge assembly adjacent the dynamic clamping member during ejection of the plurality of staples from the cartridge assembly".

Applicants respectfully disagree with the Examiner that the modification of Fontayne in view of Milliman as proposed by the Examiner would result in the tool assembly recited in Claim 26. The drive assembly 212 of Milliman is configured to move the anvil assembly 20 to a closed position as well as define a maximum tissue gap. Neither Fontayne, Bolanos, nor Milliman disclose at least one pulley which effects movement of a dynamic clamping member from a first proximal position to a second distal position. It is infeasible to incorporate the dynamic clamping member of Milliman into the Bolanos device because the jaws of the Bolanos device would not accommodate the dynamic clamping member of Milliman.

Furthermore, if one of ordinary skill in the art were to take Milliman's drive assembly 212 including working head 268 and incorporate it into Fontayne's apparatus, one of ordinary skill would see no need for Fontayne's clamp member 90 or benefit to providing the clamp

Appl. No. 10/529,799
Amdt. Dated July 7, 2008
Response to Office Action dated: March 7, 2008

member 90. Accordingly, Applicants emphasize that there is no teaching or suggestion in either Fontayne or Milliman which would suggest that any benefit would be derived from providing a tool assembly which includes structure configured to define a maximum tissue gap adjacent the dynamic clamping member and configured to maintain the proximal end of the cartridge assembly in juxtaposed alignment as stapling occurs. For these reasons, Applicant believes that Claim 32 is patentable over Fontayne and Milliman and in condition for allowance.

Claim 35 depends from Claim 32. For at least the reasons discussed above with respect to Claim 32, Applicants submit that Claim 35 is also in condition for allowance.

In view of the foregoing amendments and remarks, Applicants respectfully submit that all claims pending in this application, namely Claims 32-36 and 39-41, are in condition for allowance. Accordingly, early and favorable reconsideration of this application is respectfully requested. Should the Examiner feel that a telephone or personal interview may facilitate resolution of any remaining matters, she is respectfully requested to contact Applicant's attorney at the number indicated below.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. §1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this

Appl. No. 10/529,799
Amdt. Dated July 7, 2008
Response to Office Action dated: March 7, 2008

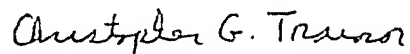
paper as a petition to extend the time as required and charge Deposit Account No. 21-0550
therefor.

CARTER, DELUCA, FARRELL & SCHMIDT, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
(631) 501-5700

Correspondence Address:
Chief Patent Counsel
Covidien
60 Middletown Avenue
North Haven, CT 06473

CGT:sf

Respectfully submitted,



Christopher G. Trainor
Reg. No. 39,517
Attorney for Applicant(s)